

## Mediation: Positive Solutions for Resolving Differences

Mediation has been an alternative dispute resolution option for parents and educators in the state of Arizona since 1985, well before mediation was mandated by the Individuals with Disabilities Education Act (IDEA) Amendments of 1997.

The Arizona Department of Education, Exceptional Student Services (ADE/ESS), believes mediation to be a viable option to due process hearings. This document attempts to assist in giving a clear picture of the mediation process. If more information is required, please call the ADE/ESS, listed in Answer 3.

### 1. Q. What is mediation?

A. Mediation is a service provided to parents and schools to assist in resolving disputes related to special education issues. Issues that may be mediated deal with identification, evaluation, educational placement of a child, or the provision of a Free Appropriate Public Education (FAPE) to the child. If a consensus can be reached, the terms agreed upon are written into the mediation agreement to be followed by the parents and the school district.

### 2. Q. Are there any other processes that could be tried prior to requesting mediation?

A. Solving problems through the chain-of-command in a school or a district is usually best; i.e., teacher, principal, special education director, superintendent, and school board. However, it is not necessary to exhaust these channels before requesting mediation. Many times a concern can be handled informally by contacting the ADE/ESS Education Program Specialist (consultant) assigned to the district or charter school. With verbal consent from the parent, the consultant can contact the school and possibly remedy the concern without the parent needing to seek formal dispute resolution options. Additional information on *Solving Problems Informally* can be obtained from [www.ade.az.gov/ess/dispute](http://www.ade.az.gov/ess/dispute), or by contacting one of the ADE/ESS offices listed in 3.A.

### 3. Q. When and how can mediation be requested?

A. Mediation may be requested whenever parents and a school district have reached an impasse or a disagreement so serious that the ability to communicate has stopped. Mediation can be initiated by calling the ADE

Mediation Coordinator, 602-542-3084 or toll free, 800-352-4558. The ADE/ESS district consultant assigned

to your school district or charter school may also be called: Phoenix, 602-542-4013 or toll free 800-352-4558; Southern Arizona, Tucson, 520-628-6330; and North-ern Arizona, Flagstaff, 928-226-0849.

### 4. Q. Who administers the mediation process?

A. The mediation process is administered by the ADE/ESS.

### 5. Q. Who pays for mediation?

A. All costs associated with mediation sessions are paid by the ADE/ESS.

### 6. Q. Who can request mediation?

A. A parent, a school district or a charter school can request mediation; however, both the parent and the school must agree to participating in the process.

### 7. Q. Where is the mediation session held?

A. The mediation session may be held at a mutually agreed upon location. Places frequently used are school district offices, ADE offices, or a community meeting room in a public utility (gas or electric company), a library, or a human services agency.

### 8. Q. What is the length of a mediation session?

A. A mediation session may be completed in half a day or in six to eight hours. It is rare to have sessions exceed one day. The length of the session depends on the issues and the willingness of participants to reach consensus for the mediation agreement.

### 9. Q. How many participants are allowed in a mediation session?

A. Three from each party has been considered a workable group. A larger number of participants has more difficulty reaching a consensus. The parents may want to include a family member, a counselor, or possibly an advocate from a disability-specific organization. The school team may include the child's teacher, the principal, and possibly a psychologist or special education coordinator, but should include the personnel ultimately responsible for carrying out the mediation agreement.

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### 10. Q. May attorneys participate in mediation?

A. Due to the nonadversarial and informal nature of mediation sessions, attorneys do not normally participate. If an attorney is present, the mediator will

request that both parties (the parent and the school) speak for themselves.

**11. Q.** What happens if the written agreement is not adhered to by either party?

**A.** Since the agreement is usually incorporated into the child's Individualized Education Program (IEP), both sides have an obligation to honor the agreement. If either party chooses not to follow the agreement, then a due process hearing is the next formal option.

**12. Q.** If a due process hearing is requested, can the information from the mediation be used in the due process hearing?

**A.** Confidential information that is *learned* by either party during mediation, must stay confidential and *may not be utilized* in a due process hearing.

**13. Q.** What is the difference in mediation and a due process hearing?

**A.** The major difference is the informal nature of the mediation proceeding. Contrary to a hearing, formal minutes or a complete record of the mediation session are not taken. There is no questioning of witnesses, or legal language. In mediation, a written agreement or plan that will benefit the child is developed by all participants through a consensus process vs. a decision being made by a third-party hearing officer. Mediation is considered a win/win proposition.

**14. Q.** How does one prepare for mediation?

**A.** Preparation should begin by reviewing the child's educational, medical, and developmental records. The issues and needs of the child should be written down. Creative thinking of how to meet those needs should be done prior to the mediation. Forms to prepare for the mediation session are available from the Mediation Coordinator. Take all information to the mediation and make arrangements to remain at the mediation until an agreement has been reached. Those people who can make decisions and commitments must be at the mediation in order for a workable agreement to be reached.

**15. Q.** What is the role of the parent?

**A.** The parent is the most knowledgeable about the child's history. The parent should be a good listener and be prepared with ideas and possible solutions to

the issues raised. Keeping an open mind to explore a variety of options can help considerably.

**16. Q.** What is the role of the school?

**A.** The staff of the school should be familiar with the student and his/her educational needs. The staff should be good listeners, have an openness to new ideas, and be prepared with possible solutions.

**17. Q.** What is the role of the mediator?

**A.** The role of the mediator is to communicate in ways that include placing the needs of the child first, defining issues, encouraging all participants, directing the discussion, encouraging consideration of options for solutions, stressing the positive, and advocating for respect of one another's opinions.

**18. Q.** What qualifications are required of a mediator?

**A.** Although there are no specific educational or occupational requirements, the ADE/ESS does seek to recruit and train individuals with particular abilities and characteristics:

- patience, empathy;
- listening skills, emotional stability;
- knowledge of special education;
- tolerance and multi-cultural awareness;
- ability to maintain a neutral, non-judgmental attitude; and
- ability to restate key issues.

**19. Q.** Is special training required to become a mediator?

**A.** Yes. All mediators who facilitate mediation sessions for the ADE/ESS must attend a training program to become a State Sanctioned Special Education Mediator.

## References

- Arizona Department of Education, Exceptional Student Services. (2000). Brochure: Dispute Resolution Packet. Phoenix, AZ: Author
- Council for Exceptional Children. (1996). Mediation opens doors to amicable dispute resolutions. *CEC Today*, 3(4), pp. 1, 9, and 13.
- Parent Information Network Clearinghouse, Exceptional Student Services, Arizona Department of Education. (2002). *Sample Letter to Request Mediation*,